Supreme Court, U.S.
FILED

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

EDWARD RONWIN, Petitioner

v.

DORI ALTMAN, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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82pp

QUESTIONS PRESENTED FOR REVIEW

I. This question appears to be a matter of first impression in the entire federal jurisdiction and is as follows: Consistent with due process, can a jury verdict stand when a juror makes unauthorized measurements and investigation of the accident scene, then present the results to the jury followed by the jury's deliberation of the juror's "evidence" when reaching its verdict?

II. Related to Question I, above, can a jury's verdict stand when it cannot be reconciled with the uncontradicted evidence adduced at trial?

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JURISDICTION

An unpublished Opinion was filed by the U.S. Court of Appeals, 8th Circuit, on August 12, 1996, (see Appendix). On the same day, a brief Judgment was entered on said Opinion, (see Appendix). On September 13, 1996, a panel of the Court of Appeals entered its Order denying Petitioner's timely filed Petition for Rehearing.

On December 13, 1995, the U.S. District Court

for the District of South Dakota entered its Order denying [Petitioner's] Motion, (based on F.R.Civ.P., Rule 60(b)), to Vacate Jury Verdict and Judgment, (see Appendix).

This Petition is within the 90 day period following the Court of Appeals' denial of the Petition for Rehearing, this Court's Rule 13.1. This Court's jurisdiction is invoked under 28 U.S.C., § 1254(1).

STATUTORY PROVISIONS INVOLVED

U.S. Constitution, 14th Amendment, § 1:

* * *

> ..No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On March 26, 1993, Petitioner, ("RONWIN"), was rear-ended by Respondent, ("ALTMAN"). ALTMAN admitted that she was looking to her left while driving into RONWIN's car. Suit was filed in the

U.S. District Court based on diversity of citizenship, 28 U.S.C., § 1332. RONWIN suffered a neck injury and a torn right shoulder tendon; and suffered medical expenses of $13,533.78, which included surgery to correct the torn tendon. The damages were uncontradicted. Nevertheless, the jury rendered a verdict for ALTMAN and the District Court entered judgment thereon. After denial of a new trial motion, RONWIN appealed. Shortly thereafter, RONWIN learned from juror CLINTON J. GUNDERSON that, while sitting as a juror in the case, he went to the scene of the accident, made measurements from a nearby parking lot that he thought was involved, (but wasn't), concluded that ALTMAN was driving "slow" when rear-ending RONWIN's vehicle and presented his finding to the jury which deliberated the alleged "evidence" prior to reaching a verdict. RONWIN then filed a Rule 60(b) motion asking for the vacation of the verdict and judgment which the District Court denied. RONWIN then timely filed a second appeal. The U.S.

Court of Appeals, 8th Circuit, affirmed the District Court's disposition of the case, see Opinion and Judgment in Appendix.

REASONS TO GRANT THE WRIT

On Question I

In the last century, there have been 40 to 50 reported cases wherein juror misconduct such as GUNDERSON's has occurred; however, none of those cases occurred in the federal jurisdiction. Eighth Circuit cases on juror misconduct revolve around Evid. Rule 606(b), such as Beanland v. Chicago, Rock Island & Pac.R.Co., 345 F.Supp. 220, 226 (W.D.Mo.1972), rev'd other gds, 480 F.2d 109 (8th Cir. 1976), and United States v. Eagle, 539 F.2d 1166, 1169-1170 (8th Cir. 1976). GUNDERSON's conduct comes squarely within the exception contained in Rule 606(b), United States v. Krall, 835 F.2d 711, 716 (8th Cir. 1987), reh. den. 1988, (citing Government of Virgin Islands v. Gereau, 532 F.2d 140, 148 (3rd Cir. 1975), cert. den. 424 U.S. 917 (1976).

The closest pronouncement covering the situa-

tion herein uttered by this Court is found in Patterson v. State of Colorado, 205 U.S. 454, 462, 27 S.Ct. 556, 558, 51 L.Ed. 879 (1907):

(Not a case of juror misconduct)

> The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence...

The Court of Appeals' characterization of this case as "lacking precedential value" appears to be inaccurate; especially so as this question of first impression is intimately intertwined with the heart of the jury system--a veritable rock upon which American jurisprudence prides itself. Juror conduct affects thousands of trial annually conducted in federal and state courts.

In situations such as posed by GUNDERSON's misconduct, state jurisdictions have universally held a fair trial and/or due process is denied; and that a new trial is the appropriate remedy. Such is the case in Goff v. Kinzle, 417 P.2d 105, 107-108 (Mont. 1966).

According to ALTMAN, she had driven more than

two city blocks in the direction of RONWIN's vehicle before rear-ending, therefore, ALTMAN was not parked in the parking lot, some 90 feet from the accident scene just prior to the accident which makes GUNDERSON's measurements absurd and at variance with ALTMAN's testimony. In just such a situation, the Court in King v. Barrett, 185 N.W.2d 210, 213 (Iowa 1971), explained:

> ...Here a juror test-drove the road, made observations at variance with those of witnesses who testified, and related his findings to the jury. The jurors could not impeach their verdict by saying this additional information influenced them, but the collecting of the data and the reporting of it during deliberations constituted such jury misconduct as to vitiate the verdict.The parties did not know during the trial of the test drive, had no opportunity to cross-examine the juror, and could not contend in argument against his findings. They had a witness in the case of whom they were unaware. We conclude that the misconduct was reasonably calculated to and probably did influence the verdict and that a new trial should have been granted on this basis...

Likewise, the Court in Walker v. Holiday Lanes, Inc., 196 Kan. 513, 413 P.2d 63,66-67 (1966), set forth the rule and the reasons

therefor tersely and clearly:

> ...where a member or members of the jury make an independent investigation of a material issue of fact and report the results thereof to the jury during its deliberation, there is misconduct requiring an order granting a new trial. The reason for the rule is clear. A 'fair trial', as the term is applied to judicial proceedings, anticipates the right to object to the admission of evidence, cross-examine the witnesses and rebut the evidence introduced. All of this is denied where a juror makes an independent investigation of an issue of fact and reports to the jury in the secrecy of its deliberations. It might also be suggested that a party can hardly be said to have a trial by jury as that term is understood in American jurisprudence, if each juror was permitted to make an independent investigation of the facts. (quotation marks in original).

Similar conduct to GUNDERSON's also mandated a new trial in Douglass v. Missouri Cafeteria, Inc., 532 S.W.2d 811, 813 (Mo.App.1975); Sanders v. Curry County, 456 P.2d 493, 494 (Or.1969); Diehl v. Wilmot Castle Co., 26 Ohio St.2d. 249, 271 N.E.2d 261, 262-263 (1971); Flanders v. Mullin, 73 Vt. 276, 50 A. 1055, 1056 (1901).

Even when the juror does not communicate the unauthorized view or visit to the other jurors,

prejudicial error warranting a new trial is mandated, Kremlacek v. Sedlacek, 190 Neb. 460, 209 N.W.2d 149, 152 (1973).

GUNDERSON's visit to the accident scene, measurements and the opinions he formed therefrom, and his communication of those activities and opinions to the test of the jury that deliberated upon them, were clearly prejudicial, denied RONWIN a fair and impartial trial based on the evidence adduced in open court during the trial, denied due process to RONWIN and merited a grant of new trial. That is the overwhelming holding in American state judicial systems.

In denying RONWIN's motion to vacate jury verdict and judgment, the District Court labelled GUNDERSON's conduct as "error", but concluded that the error was "harmless" because, "...[ALTMAN's] car was going slow at the time of impact..." (emphasis added), and "[RONWIN] made no claim for damage to his car...", and "..it is clear that the jury decided that [RONWIN] was not injured as a result of the accident," see

Order denying said motion in Appendix.

The trial testimony and evidence showed that RONWIN's vehicle had suffered damage which was repaired. Payment for the repairs was made prior to trial by ALTMAN's insurer; hence, no damage to RONWIN's vehicle was claimed at trial, but the jury was made aware by the testimony of both RONWIN and LJUNGGREN, body shop manager of the auto dealer, of the amount and nature of the damage to RONWIN's vehicle. The District Court was in sheer error in relying on the non-claim for vehicle damage to support its claim of "harmless error."

The District Court's claim that ALTMAN's "...car was going slow at the time of impact," is erroneous because, (a) "slow" is undefined and essentially meaningless; what counts is the force with which the rear-ending occurs; and (b) the uncontradicted testimony of the expert, Cadillac body shop manager, LJUNGGREN, was that ALTMAN's car had to be travelling at greater than 5 m.p.h., and could have been going as high

as 10 m.p.h., which RONWIN, who was qualified as an expert by the District Court, testified that at such speeds, ALTMAN hit RONWIN's vehicle at more than 1.25 tons of force and could have hit RONWIN's vehicle with a force of 5 tons.

A simple experiment will readily demonstrate that the word, "slow", has no meaning in this case: stand against a solid mound of earth in the path of a 3,000 lb. vehicle, (the weight of ALTMAN's car), bearing down at two (2) miles per hour, (a "slow" speed in layman's parlance). If you don't remove yourself from the path of the vehicle, you will be crushed to death by the vehicle force of 403 lbs. The District Court's grounds for claiming "harmless error" based on the notion that ALTMAN's vehicle was going "slow" is wholly erroneous.

Furthermore, the District Court pointed to no trial evidence to support its holding that it is "clear that the jury decided that RONWIN was not injured" by the accident. The testimony showed, without contradiction, that RONWIN suffered both

a neck injury and a shoulder tendon tear and needed medical services as a result. What is clear is that the jury's deliberation of GUNDERSON's irrelevant and improper "evidence", which included the absurd concept of "slow" and the utter disregard of the trial evidence establishing RONWIN's case was highly prejudicial and formed the bases for the jury's erroneous verdict as well as denied due process and a fair trial to RONWIN.

On Question II

Again, the uncontradicted evidence was that RONWIN suffered $13,533.78 in medical damages which a doctor-expert described as necessary and both neck and shoulder injury as a result of the accident, fault for which ALTMAN admitted. The jury's failure to award any damages is utterly contrary to the evidence. In Trandulles Center, Inc. v. USX Corp., 976 F.2d 219, 227 (4th Cir. 1992), the Court held that a "jury verdict may be set aside and the case remanded for new trial when it is not possible to reconcile the

findings." That must also be the case when it is not possible to reconcile the verdict with the uncontradicted evidence.

CONCLUSION

For the foregoing reasons, it is urged that this Court grant the Writ of Certiorari.

Respectfully submitted,

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Petitioner pro se

DATE:

(Appendix follows)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-3564/96-1068SDSF

Edward Ronwin, Appellant,	*
	* Appeal from the United
v.	* States District Court for
Dori Altman, Appellee.	* the District of South
	* Dakota

ORDER

The petition for rehearing filed by the Appellant has been considered by the Court and is denied.

September 13, 1996

Order entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-3564/96-1068SDSF

Edward Ronwin, Appellant,	* Appeals from the United
	* States District Court for
v.	* the District of South
Dori Altman, Appellee.	* Dakota
	*

JUDGMENT

These appeals from the United States District Court were submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and

adjudged that the judgment of the district court in these causes is affirmed in accordance with the opinion of this Court.

August 12, 1996

A true copy. /s/ Michael E. Gans
ATTEST: CLERK, U.S. COURT OF APPEALS, EIGHT CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 95-3564/96-1068

Edward Ronwin,	* Appeals from the United
Appellant,	* States District Court for
v.	* the District of South
Dori Altman,	* Dakota
Appellee.	* [UNPUBLISHED]

Submitted: July 26, 1996
Filed: August 12, 1996

Before BOWMAN, BEAM and LOKEN, Circuit Judges.

PER CURIAM.

Edward Ronwin sued Dori Altman for personal injuries alleged to have resulted from a low-speed, rear-end automobile collision. A jury returned a verdict in favor of Altman, and judgment was entered on the verdict. The District

Court[1] denied Ronwin's post-trial motions. Ronwin appeals, seeking reversal on several grounds.

Having considered all the issues Ronwin has raised in these appeals, we conclude that the District Court committed no error of law and did not abuse its discretion in denying Ronwin's post-trial motions. Because the case lacks precedential value, we affirm the judgment below without further discussion.

AFFIRMED. See 8th Cir. R. 47B.

A true copy.

Attest: CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[1]The Honorable John B. Jones, United States District Judge for the District of South Dakota.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

****

EDWARD RONWIN,	*	CIV 94-4039
Plaintiff,	*	
-vs-	*	ORDER DENYING PLAINTIFF'S
DORI ALTMAN,	*	MOTION TO VACATE JURY
Defendant.	*	VERDICT AND JUDGMENT

****

Plaintiff's Motion to Vacate Jury Verdict and Judgment Doc. 240, has been fully briefed by the parties, and I conclude that oral argument is not required.

The basis for plaintiff's motion is that juror Clinton J. Gunderson went to the scene of the accident and did some measuring from which he concluded that the defendant was not driving very fast at the time of the accident. While it was error for the juror to make any investigation at the scene of the accident, I conclude that it was harmless error. All of the evidence in the case, including testimony of the plaintiff and the physical damage to the cars, establish conclusively that defendant's car was going slow at the time of impact. Plaintiff made no claim for damage to his car and it is clear

that the jury decided that he was not injured as a result of the accident.

Upon the record herein,

IT IS ORDERED:

(1) That Plaintiff's Motion to Vacate Jury Verdict and Judgment, Both Entered September 14, 1995 (Oral Argument Requested), Doc. 240, is denied in all respects.

Dated this 13th day of December, 1995.

BY THE COURT:

/s/John B. Jones
Senior U.S. District Judge

ATTEST:

WILLIAM F. CLAYTON, CLERK

BY: /s/ DeAnn Martin
DEPUTY

(SEAL)
(ENTERED December 13, 1995)